



(916) 445-3076

July 16, 1980

Mr.

Dear

This letter is in reply to your recent communication requesting an opinion on two different questions. One question concerned a transfer from a man and woman to their son and his wife to be effective after the last of the grantors die. The second question concerned the transaction between U.I.C. and Tropicana, a subject about which we had a previous communication.

In our opinion, the deed from Dana C. Smith and Rosamond Smith to Gilbert M. W. Smith and Joan Smith as tenants in common would be held by a court to be the reservation of a life estate on two-thirds of the property. Under Revenue and Taxation Code Section 62(e), such a transfer is excluded from reappraisal. It usually would be important to know who uses the property. However, a life tenant can let someone else use the property without destroying the life tenancy. Under these circumstances, Section 62(e) would mandate exclusion from reappraisal whether the grantors or grantees used the property.

In the U.I.C. transfer, it has become evident as more facts are coming to light that my previous conclusion was in error. The transfer in November 1977 from U.I.C. to Tropicana was not a change in ownership because the person making the transfer did not own the property and did not have authority to transfer the property. In my previous letter I stated that if the transaction was voidable, then both the transfer and subsequent rescission would be a change in ownership,

July 16, 1980

but that if the original transfer was void, there would be no change in ownership either time. I assumed the transaction was voidable, but I now conclude that the transaction was void from the inception under Section 1041 of the Civil Code. As a void transaction, there should be no change in ownership either upon transfer to Tropicana or upon the subsequent rescission.

Very truly yours,

Robert D. Milam  
Tax Counsel

RDM:fr

cc: Mr. Gordon P. Adelman  
Mr. Robert H. Gustafson  
Mr. Verne Walton  
Legal Section